

HKEx LISTING DECISION

HKEx-LD95-2 (July 2010) (updated in October 2019 (amendments to the reverse takeover Rules))

Parties	Company A – a Main Board issuer The Acquisition Target – a company to be acquired by Company A from the Vendor The Vendor - the vendor of the Acquisition Target The Disposal Target – a company wholly owned by Company A and to be sold to Mr X Mr X – Company A’s former chairman and controlling shareholder
Issue	Whether Company A’s proposed acquisition constituted a reverse takeover under Rule 14.06(6) <u>14.06B</u>
Listing Rules	Main Board Rule 14.06(6) <u>14.06B</u>
Decision	The proposed acquisition constituted a reverse takeover under Rule 14.06(6) <u>14.06B</u>

FACTS

Background

- 1 Company A’s principal business was designing, manufacturing and selling toys (the **Original Business**).
- 2 Company A made an open offer to raise funds for general working capital. Mr X did not take up any offer shares. As a result, his interest in Company A decreased from 40% to 8% on completion of the offer. He also retired as director and chairman at Company A’s annual general meeting.
- 3 At about the same time, Company A commenced the business of property holding and research and development of electric bus batteries, which were minimal in scale and insignificant to Company A.

Proposed acquisition and disposal

- 4 Four months after the completion of the open offer, Company A proposed to:
 - a. acquire the Acquisition Target from the Vendor (the **Acquisition**). The Acquisition Target was in the business of manufacturing equipment for the production of thin film solar modules. The Acquisition would be a very substantial acquisition, its completion was not conditional on the Disposal; and
 - b. sell the Original Business to Mr X (the **Disposal**). This would be a very substantial disposal and conditional on completion of the Acquisition.
- 5 The Acquisition Target, established less than a year earlier, had yet to generate any revenue.
- 6 Company A would pay for the Acquisition by issuing consideration shares and convertible bonds to the Vendor. The consideration shares and the shares convertible from the bonds would represent about 17% and 70% of Company A's enlarged share capital respectively. The terms of the convertible bonds would not allow any conversion which would trigger a mandatory general offer under the Takeovers Code (the **Conversion Restriction**).
- 7 Company A would use the disposal proceeds to (i) repay shareholder loans; and (ii) pay a special dividend to shareholders.
- 8 Company A considered that the Acquisition would enable it to change its business into a new area with high potential growth whereas the Disposal would realise its investment in a loss making business.
- 9 There was an issue of whether the Acquisition would constitute a reverse takeover under Rule 14.06(6).
- 10 Company A submitted that the Acquisition would not be a reverse takeover under the Rule because:
 - a. the Acquisition and the Disposal would not result in a change in control of Company A (as defined under the Takeovers Code); and
 - b. no vendor gained control of Company A within 24 months before the agreements for the proposed Acquisition and Disposal.

APPLICABLE LISTING RULES

11 Rule 14.06(6) defines a “reverse takeover” as:

an acquisition or a series of acquisitions of assets by an issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Exchange Listing Rules. A “reverse takeover” normally refers to:

- (a) an acquisition or a series of acquisitions (aggregated under rules 14.22 and 14.23) of assets constituting a very substantial acquisition where there is or which will result in a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries); or
- (b) acquisition(s) of assets from a person or a group of persons or any of his/their associates pursuant to an agreement, arrangement or understanding entered into by the listed issuer within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition.”.

[\(Rule 14.06\(6\) \(now Rule 14.06B\) was amended on 1 October 2019. See Note 1 below.\)](#)

ANALYSIS

12 Rule 14.06(6) seeks to prevent circumvention of the new listing requirements. Its introductory paragraph defines “reverse takeover” as an acquisition or a series of acquisitions which represents, in the Exchange’s opinion, an attempt to (i) list the assets to be acquired and (ii) circumvent the new listing requirements. Rules 14.06(6)(a) and (b) provide bright line tests which apply to two specific forms of reverse takeover. They are not meant to be exhaustive. Therefore, transactions which are in substance backdoor listings but fall outside sub-rules (a) and (b) could still be treated as reverse takeovers. This, in practice, has been applied only to extreme cases (see the Listing Committee Annual Report 2009).

- 13 Rules 14.06(6)(a) and (b) did not apply here because (i) the Acquisition would not trigger the change in control test under sub-rule (a); and (ii) the Vendor did not gain control of Company A within 24 months before the Acquisition would be completed.
- 14 In considering whether the Acquisition would be a reverse takeover defined under Rule 14.06(6) and an extreme case, the Exchange considered that:
- a. The Acquisition and Disposal would effect a complete change of Company A's principal business. Through the Disposal, Company A would sell the Original Business to its former controlling shareholder, Mr X, whereas the Acquisition would result in an injection of a new business from the Vendor. This would be a listing of the Acquisition Target's business.
 - b. The Acquisition Target had no trading record and could not meet the profit test for new applicants under Rule 8.05(1)(a).
- 15 Company A submitted that the Acquisition would not be a reverse takeover as it would not result in a change in control of Company A (as defined under the Takeovers Code). The Exchange considered this fact irrelevant. An acquisition is a reverse takeover under the introductory paragraph of Rule 14.06(6) if the Exchange is satisfied that it is an attempt to (i) list the assets to be acquired and (ii) circumvent the new listing requirements. This is irrespective of whether it would result in a change in control. In this case, the Exchange considered that (i) and (ii) were satisfied given the factors in paragraph 14.

CONCLUSION

- 16 The Acquisition constituted part of a series of transactions intended to circumvent the requirements for new applicants and was an extreme case.

Notes

1 The reverse takeover Rules were amended on 1 October 2019. Under the new Rule 14.06B (which incorporates former Rule 14.06(6) with certain modifications):

- A "reverse takeover" is defined as an acquisition or series of acquisitions by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction and/or arrangement or series of transactions and/or arrangements which constitutes, an attempt to achieve a listing of the acquisition targets and a means to circumvent the requirements for new applicants as set out in Chapter 8 of the Listing Rules.

- Note 1 to Rule 14.06B sets out the factors that the Exchange will normally consider in assessing whether the acquisition or series of acquisitions is a reverse takeover, including:
 - i) the size of the acquisition or series of acquisitions relative to the size of the issuer;
 - ii) a fundamental change in the issuer's principal business;
 - iii) the nature and scale of the issuer's business before the acquisition or series of acquisitions;
 - iv) the quality of the acquisition targets;
 - v) a change in control (as defined in the Takeovers Code) or de facto control of the listed issuer (other than at the level of the subsidiaries); and/or
 - vi) other transactions or arrangements which, together with the acquisition or series of acquisitions, form a series of transactions or arrangements to list the acquisition targets.

- Note 2 to Rule 14.06B contains two specific forms of reverse takeovers involving a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of the subsidiaries) and an acquisition or a series of acquisitions of assets from the new controlling shareholder and/or its associates at the time of, or within 36 months from, the change in control.

2 The Rule amendments would not change the analysis and conclusion in this case.